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14
15 UNITED STATES DISTRICT COURT
16 FOR THE NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION
18

19 IN RE: VOLKSWAGEN “CLEAN DIESEL”
20 MARKETING, SALES PRACTICES, AND
21 PRODUCTS LIABILITY LITIGATION

MDL No. 2672 CRB (JSC)

**RESPONSE TO ORDER AND LETTER
FROM DEFENDANTS (Dkts. 8210-11)**

22 This Document Relates To:

23 *BRS v. Volkswagen AG, et al.*, Case No. 16-cv-
24 3435 (“Bondholders Securities Action”)

JUDGE: Hon. Charles R. Breyer
CRTRM: 6, 17th Floor

1 Lead Plaintiff Puerto Rico Government Employees and Judiciary Retirement Systems
2 Administration (“Plaintiff” or “PRGERS”) respectfully responds to Defendants Volkswagen AG
3 (“VWAG”), Volkswagen Group of America, Inc. (“VWGoA”) and Volkswagen Group of America
4 Finance, LLC’s (“VWGoAF”) (collectively, “Volkswagen” or “Defendants”) March 18, 2024 letter
5 (Dkt. 8210, the “Letter”) and this Court’s Order Directing Plaintiff Response (Dkt. 8211, the
6 “Order”).

7 In response to this Court’s Order: (1) Plaintiff does intend to continue prosecuting the
8 Bondholder action; and (2) Plaintiff’s position has not changed from its last correspondence in the
9 parties’ joint case management statement. *See* Dkt. 7906 (the “Statement”). While Plaintiff
10 previously argued in opposition to Defendants’ motion for summary judgement that there is a triable
11 issue of fact regarding reliance, Plaintiff renews its request to conduct limited discovery on the issue
12 of reliance as Defendants’ motion was filed prematurely before discovery on that issue could be
13 completed. Furthermore, in light of the Ninth Circuit decision overturning this Court’s prior order
14 certifying the class based on the *Affiliate Ute* presumption, Plaintiff requests leave to file a revised
15 motion for class certification that will be supported by, among other things, the filing of an expert
16 report concerning market efficiency, and the application of the fraud-on-the-market presumption of
17 reliance at least with respect to the Volkswagen Bonds at issue as purchased on the secondary
18 market.

19 Defendants, in their Letter, incorrectly assert that Plaintiff did not purchase their Bonds in
20 an efficient market. Dkt. 8210 at 2. Defendants ignore the fact that whether a market is efficient is
21 a “fact-specific inquiry” with no “bright line rule.” *No. 84 Employer-Teamster Joint Council*
22 *Pension Trust Fund v. Am. West Holding Corp.*, 320 F.3d 920, 934 (9th Cir. 2003). Moreover, in
23 making this assertion, among other things, Defendants again ignore that discovery produced by
24 Santander Asset Management LLC (“Santander”) demonstrated that Plaintiff purchased
25 Volkswagen Bonds both in the secondary market and the initial offering. *See* Dkts. 6580-1
26 (Declaration of Ian Berg) at ¶¶4, 6; 6580-2 (the Santander Deposition) at 78:13-79:3; 6580-3
27 (Santander’s May 15, 2014 Trade Ticket and Confirmation (SAM_VW-000979). This key fact
28 means that Plaintiff is entitled to a fraud-on-the-market presumption of reliance under *Basic Inc. v.*

1 *Levinson*, 485 U.S. 224, 108 S.Ct. 978 (1988), with respect to the Bonds purchased on the secondary
 2 market, so long as it can demonstrate that the Bonds were trading in a “generally efficient market”
 3 when the transaction took place. *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 134 S.
 4 Ct. 2398, 2404 (2014).

5 As detailed in the Statement, Plaintiff respectfully requests (i) the opportunity and time
 6 necessary to schedule and take the depositions of the former Santander employees Paul Hopgood,
 7 Jaime Pandal, and Jesus Mattei, all of whom are still based in Puerto Rico according to Plaintiff’s
 8 research, and (ii) the time necessary for Plaintiff to engage an expert economist to prepare his expert
 9 report concerning market efficiency and for Plaintiff to prepare and finalize Plaintiff’s revised
 10 motion for class certification supported by, among other things, that expert report. *See* Dkt. 7906 at
 11 2:6-11. Plaintiff requests 120 days to complete this discovery, obtain the expert report, and prepare
 12 and file its revised motion for class certification.

13 Plaintiff believes 120 days are necessary because subpoenas will need to be issued and
 14 served in Puerto Rico and time-consuming travel and other arrangements will be required. Plaintiff
 15 also needs time to engage an expert economist to prepare his expert report. Moreover, since the
 16 filing of the Statement over two and a half years ago, the three attorneys primarily responsible for
 17 litigating this case, Ian D. Berg (who subsequently passed away), Takeo A. Kellar, and Todd
 18 Kammerman, left Lead Counsel’s firm. Now, new attorneys who had not been litigating this action
 19 on a day-to-day basis are familiarizing themselves with the prior proceedings and the complicated
 20 facts and issues in this action.

21 Put simply, Volkswagen’s resolution of a case filed by the Securities and Exchange
 22 Commission (“SEC”) more than two and a half years after this action was initiated on behalf of the
 23 Bondholders¹ does not require dismissal of this action. Notably, there is nothing in the SEC’s
 24 settlement that releases or moots Plaintiff and the putative class members’ claims, and no evidence
 25

26 ¹ This action, *BRS v. Volkswagen AG et al*, 3:16-cv-03435 (N.D. Cal.), was filed on behalf of the
 27 Bondholders on Jun 20, 2016. This Court appointed PGERS Lead Plaintiff and its counsel Lead
 28 Counsel on October 11, 2016. *Id.* at Dkt. 18. The SEC’s action, *Securities and Exchange
 Commission v. Volkswagen Aktiengesellschaft, et al.*, No. 19-cv-01391 (N.D. Cal.), was not filed
 until filed March 14, 2019.

1 was submitted demonstrating that Plaintiff and the putative class members' alleged damages in this
2 action will be fully paid pursuant to the SEC settlement.

3 Therefore, Plaintiff respectfully requests this Court to issue an order: (i) allowing Plaintiff
4 to conduct the limited discovery outlined herein; (ii) file a revised motion for class certification and
5 (iii) require the parties, within ten (10) days of the issuance of the order, to meet and confer regarding
6 an applicable briefing schedule on Defendants' renewed motion for summary judgment and
7 Plaintiff's revised motion for class certification.

8 ABRAHAM, FRUCHTER &
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10 Dated: April 12, 2024

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